No. _____

Supreme Court, U.S.
FILED

(1)

93 1668 APR 11 1994

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

NO.

MELANIE CROWELL,

PETITIONER,

v.

UNITED STATES,

RESPONDENT.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

DAVID M. DUDLEY, Counsel of Record
PETER T. MAVRICK
1999 Avenue of the Stars
Suite 2800
Los Angeles, CA 90067
(310) 772-8400

41 pp

QUESTION PRESENTED

Whether a warrant to search only a residence thereby authorizes search without probable cause of a purse in apparent possession of its owner, who is in the residence during the search but nowhere mentioned in the warrant?

LIST OF THE PARTIES

The parties to this proceeding are Melanie Crowell and the United States of America.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF THE PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	3
PERTINENT CONSTITUTIONAL PROVISION	3
STATEMENT OF THE CASE	4
A. Introduction	4
B. Facts	5
C. Procedural History	6
REASON FOR GRANTING THE WRIT	8
I. THIS COURT SHOULD DECIDE WHETHER WARRANTLESS SEARCH OF A PURSE IN APPARENT POSSESSION OF ITS OWNER VIOLATES THE FOURTH AMENDMENT.	8
CONCLUSION	18
APPENDIX A	1a
APPENDIX B	15a

TABLE OF AUTHORITIES

Cases	Page
Ybarra v. Illinois, 444 U.S. 85, 91, 100 S.Ct. 338, 342 (1979)	8
United States v. Branch, 545 F.2d 177, 182 (D.C. Cir. 1976)	16
United States v. Giwa, 831 F.2d 538, 543-545 (5th Cir. 1987)	14
United States v. Graham, 638 F.2d 1111, 1114 (7th Cir. 1981), *cert. denied* 480 U.S. 1034, 101 S.Ct. 1748 (1981)	9, 17
United States v. Gray, 814 F.2d 49, 51 (1st Cir. 1987)	14
United States v. Johnson, 475 F.2d 977, 978-979 (D.C. Cir. 1973)	15
United States v. Martinez-Zayas, 857 F.2d 122, 133-134 (3rd Cir.1988)	16
United States v. Micheli, 487 F.2d 429, 431 (1st Cir. 1973)	14

Cases	Page
United States v. Teller, 397 F.2d 494 (7th Cir. 1968), *cert. denied* 393 U.S. 937, 89 S.Ct. 299 (1968)	17
United States v. Young, 909 F.2d 442, 444-445 (11th Cir. 1990) *cert. denied*, ____ U.S. ____, 112 S.Ct. 90 (1991).	14-15
Statute and Rule	
21 U.S.C. § 841(A)(1)	6
Fed. Rules Cr. Proc. Rule 12	7
Constitutional Provision	
Fourth Amendment to United States Constitution	*passim*

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

_____

NO.

_____

MELANIE CROWELL,

PETITIONER,

v.

UNITED STATES,

RESPONDENT.

_____

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

_____

PETITION FOR A WRIT OF CERTIORARI

_____

Petitioner Melanie Crowell hereby petitions this Court to issue a writ of

Ninth Circuit in the unpublished memorandum opinion of *United States of America v. Melanie Crowell*, dated November 30, 1993. The petition for rehearing in the Court of Appeals was denied on February 1, 1994.

OPINIONS BELOW

The unpublished Ninth Circuit opinion is reproduced in Appendix A. The Order of the Ninth Circuit denying Petitioner Melanie Crowell's Petition for Rehearing is reproduced as Appendix B.

JURISDICTION

The Ninth Circuit entered its opinion on November 30, 1993. A timely Petition for Rehearing with suggestion for Rehearing En Banc filed by Melanie Crowell ("Petitioner") was denied on February 1, 1994. This Court has jurisdiction to review the Ninth Circuit's opinion and judgment under 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL PROVISION

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF THE CASE

A. Introduction

In this case, the Ninth Circuit upheld the order of the District Court, District of Hawaii, denying Petitioner's motion to suppress evidence. The Ninth Circuit upheld search of Petitioner Crowell's purse based on a warrant which authorized search only of the premises and made no mention of either visitors to or occupants of the premises. Although Petitioner did not physically possess the purse, it remained in her apparent possession, near her as she sat on a sofa. This Petition argues that the warrantless search of a purse in apparent possession of its owner violates the Fourth Amendment.

B. Facts

On November 14, 1991, federal law enforcement agents executed a warrant to search an apartment for certain documents, items of personal property tending to identify the owner(s) or occupant(s), and firearms and ammunition. The warrant *did not* mention search of any occupant or visitor in the apartment. ER 62-64.[1] At the suppression hearing, a federal agent testified that he had been informed by another agent prior to the search that Petitioner Crowell was a "resident" of the apartment, ER 136; although the government did not lay a foundation for this testimony, defense counsel did not object. *Id.*

---

[1]ER citations are to the pages of Petitioner's excerpt of record filed with the Ninth Circuit in connection with petitioner's appeal.

When agents executed the warrant, Petitioner and another woman, each holding a baby, were sitting on a long sofa in the living room of the apartment. ER 140-141. Petitioner's purse sat at the foot of the sofa. ER 144. An agent began searching the purse; during that search he asked the women who owned the purse, and learned that it was Petitioner's. ER 145. The search revealed methamphetamine, and the District Court denied the motion to suppress. The Court of Appeals affirmed.

C. Procedural History

An Indictment filed in the District of Hawaii charged Petitioner Crowell with violation of 21 U.S.C. § 841(a)(1) (possession of crystal methamphetamine with intent to distribute. ER 1-2. At her arraignment, Petitioner pled not

guilty to both charges. ER 48. Before trial, Petitioner moved to suppress evidence pursuant to Rule 12 of the Federal Rules of Criminal Procedure, *Id.* Following an evidentiary hearing, the District Court denied the motion. ER 52.

The Ninth Circuit affirmed, holding that there was evidence that Petitioner

> "... was an occupant rather than a visitor to the premises[,] ...[and that] the purse was not in Crowell's possession at the time of the search. If a warrant sufficiently describes the premises to be searched it is appropriate to search all personal effects on the premises which might contain the items described in the warrant." Pet.App. 8a.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD DECIDE WHETHER WARRANTLESS SEARCH OF A PURSE IN APPARENT POSSESSION OF ITS OWNER VIOLATES THE FOURTH AMENDMENT.

The search of Petitioner Crowell's purse was a Fourth Amendment violation of a gravity no less than search of her person. The warrant authorized search only of the residence, making no mention of either visitors to or occupants of the premises. As this court held in *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S.Ct. 338, 342 (1979), probable cause to search the premises where a person may happen to be does not thereby confer probable cause to search his person, because that search must be supported by probable cause *particularized* to his person. Searching Crowell's purse violated *Ybarra*'s principle in the same way that search of her person would. Crowell's purse

enveloped her most personal and private property, and Crowell, like most women, manifested the high privacy value in her purse by keeping it close to her.

Contrary to the Ninth Circuit's holding, a woman's *physical* possession of her purse should not be the primary consideration underlying her Fourth Amendment right; rather, her apparent personal possession should suffice. That "[t]he human anatomy does not naturally contain external pockets, pouches, or other places in which personal objects can be conveniently carried" is an anatomical deficiency in humans generally, *United States v. Graham*, 638 F.2d 1111, 1114 (7th Cir. 1981), *cert. denied* 480 U.S. 1034, 101 S.Ct. 1748 (1981), but the remedy for this defect, whether it be a man's pocket or a woman's purse, should not acquire

Fourth Amendment disfavor because the purse sits "next to" her owner, in contrast to the pocket "on" his person protected by the Fourth Amendment. Using this "on" the person "off" the person distinction, when treating a purse like a pocket, results in unequal treatment by according similar treatment to dissimilar groups.

As a historical matter, the word purse has evolved from when there was little difference between pocket and purse. *Oxford English Dictionary* defines pocket as "[a] small bag or pouch worn on the person; ... [especially] one inserted in or attached to a garment, for carrying a purse or other small articles." Second Edition, Volume XI, p.1107. As early as 1100, a purse was "[a] small pouch ... used for carrying money on the person."

Id., Volume XII, p.883. This definition had no necessary gender connection. Not until 1801 did our language describe what by today's standards would be called a woman's purse; then it was called a "reticule" or sometimes "ridicule," "[a] small bag ... for carrying on the arm or in the hand, used by ladies as a pocket or workbag." *Id.*, Volume XIII, p.778. "'Reticules' ... are a species of little workbag worn by the Ladies, containing Snuff-boxes, Billet-doux, Purses, Handkerchiefs, Fans, Prayer-books, Bon-Bons, Visiting Tickets." *Id.*, citing C.Wilmot, Let. 13 Dec. in *Irish Peer* (1920) 21. Not until 1955 did purse become accepted as meaning a woman's handbag. *Id.*, Volume XII, p.884. This evolution of language depicts change not only in etiquitte and fashion, but more

importantly in reasonable expectations of privacy. Over time men's garments varied, but they continued to have the pocket attached; by contrast, women's clothes eventually contemplated a carrying bag to hold not only money, the traditional item carried in the purse or pocket, but also a variety of other items she would consider private. The divergence of clothing reflects separate, gender-based expectations of privacy.

By today's standards, a man typically holds in his pockets the private things he carries, and a woman's purse holds her personal effects; when a man sits down on a chair or couch his pockets remain full, whereas a woman's purse often leaves her hands but usually rests closely next to her. But on the Ninth Circuit's view, glitter and tarnish sit side by side

because the man's pocket will retain its privacy right, but a woman's purse will not. It *might* make sense to criticize a man's claim to privacy in the wallet sitting next to him on the couch, but the analogy is not apt when it concerns the woman's purse sitting next to her. Men's and women's reasonable expectations of privacy do not function as symetrically as the Ninth Circuit's holding.

Although the other United States Courts of Appeal disagree in their analyses, no Circuit fairly treats the "problem" of the woman's purse. The First, Fifth, and Eleventh Circuits engage in the same erroneous analysis as the Ninth Circuit, shortchanging women's reasonable expectations of privacy. They test the relationship between the person and the place to determine the lawfulness

of a search of a purse not in its owner's physical possession. In such cases, searches of occupants of the premises are more likely to be permitted than of visitors. *United States v. Giwa*, 831 F.2d 538, 543-545 (5th Cir. 1987) (upheld search of overnight visitor's flight bag found in closet during premises search); *United States v. Micheli*, 487 F.2d 429, 431 (1st Cir. 1973) (upholding search of a briefcase during a premises search because owner of briefcase was also co-owner of premises); *United States v. Gray*, 814 F.2d 49, 51 (1st Cir. 1987) (search of non-resident defendant's jacket draped over chair during premises search upheld because of suspicious circumstances behind defendant's presence); *United States v. Young*, 909 F.2d 442, 444-445 (11th Cir. 1990), *cert. denied*, ____ U.S. ____,

112 S.Ct. 90 (1991) (in dicta, same analysis).

Even more unfair to women's expectations of privacy is the analysis of the D.C., Third, and Seventh Circuits, that only actual physical possession can protect a purse from being searched during a premises search. Women in American society generally understand that their purses are no less private when sitting next to them than when carried. Nonetheless, the District of Columbia Circuit in *United States v. Johnson*, 475 F.2d 977, 978-979 (D.C. Cir. 1973), permitted search of a woman's purse in her apparent though not physical possession, holding that a purse not worn does not constitute "... an extension of ... [the owner] so as to make the search one of her *person*" (emphasis in original); there the

defendant, a visitor to the premises during the premises search, was sitting on a couch while her purse sat on the coffee table immediately in front of the couch. Using the same analysis, *United States v. Branch*, 545 F.2d 177, 182 (D.C. Cir. 1976), held as impermissible the search of a shoulder bag in an apartment where the owner of the bag, apparently a mere visitor to the apartment, carried it suspended from her shoulder while entering the apartment during the premises search. Similarly, in *United States v. Martinez-Zayas*, 857 F.2d 122, 133-134 (3rd Cir. 1988), agents -- just before executing a warrant for search of a premises -- observed defendant, occupant of premises, enter carrying a purse; the Third Circuit upheld the agents' search of her purse because it was not in her physical

possession, even though it sat only four feet from her. The Seventh Circuit is in accord. *United States v. Teller*, 397 F.2d 494 (7th Cir. 1968), *cert. denied* 393 U.S. 937, 89 S.Ct. 299 (1968) upheld search of a purse because the owner had set her purse down on a bed momentarily during a premises search, and thus by relinquishing her physical possession thereby she relinquished her reasonable expectation of privacy in the purse. *See United States v. Graham*, *supra*, 638 F.2d at 1114 (7th Cir. 1987) (a shoulder purse carried by a person at the time he is stopped lies within the scope of a warrant authorizing the search of his person because the purse is in his physical possession).

Neither the Ninth nor any other Circuit properly examines the warrantless search of a woman's purse not in her

physical possession, but in her apparent possession. Articles in a purse sitting next to her owner should be no less private than when carried. Men encounter this problem rarely, as their dress contemplates holding private things in their pockets, which they obviously cannot remove. The Circuits' resolution of this problem abridges women's reasonable expectations of privacy.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

DAVID M. DUDLEY, Counsel of Record
PETER T. MAVRICK
1999 Avenue of the Stars
Suite 2800
Los Angeles, CA 90067
(310) 772-8400